

**PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA**

Project File Number, Description, and Location

PDC 01-12-103, Planned Development Rezoning from R-2 Residential District to A(PD) Planned Development District and subsequent permits to allow up to 26 multi-family attached residences on a 0.67 gross acre site (Rincon South Specific Plan) (Bellagio Garden LLC, Owner, HMH Inc., Developer). Council District: 3

A Planned Development Rezoning to allow the development of up to 26 multi-family attached residences on a 0.67 gross acre site. California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location **does not** contain a listed toxic site.

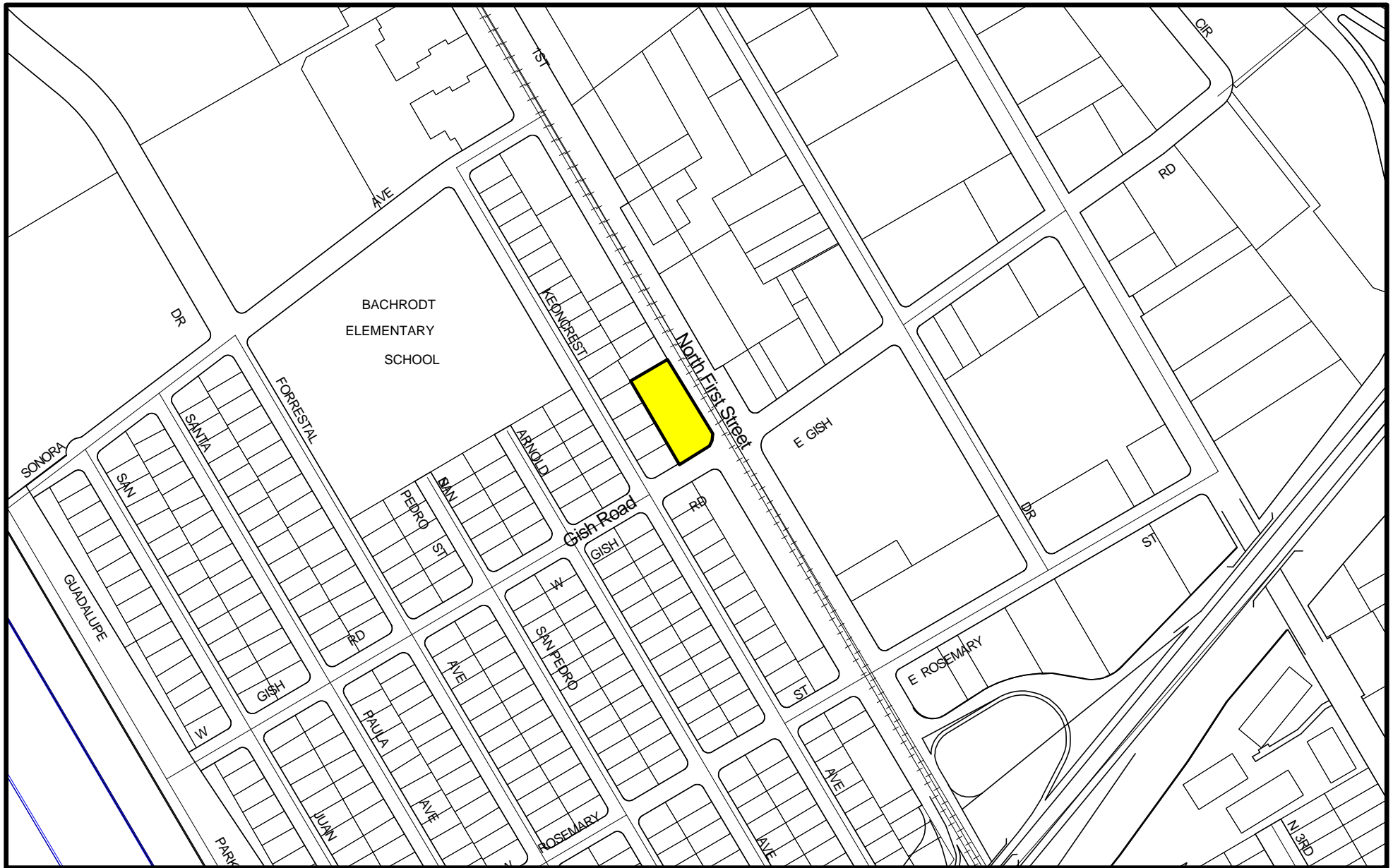
Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on **June 30, 2003**, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **June 9, 2003** and ends on **June 30, 2003**

A public hearing on the project described above is tentatively scheduled for **July 9, 2003 at 6:00 P.M.** in the City of San Jose Council Chambers, 801 N. First Street, San Jose, CA 95110. The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 180 W. San Carlos Street, San José, CA 95110 San Jose, and online at www.ci.san-jose.ca.us/planning/sjplan/eir/mnd2003.htm Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call **Mike Mena** at (408) 277-4576.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

Circulated on: June 9, 2003

Deputy



Scale: 1"=370'



File No: PDC01-12-103

District:3

Quad No:67

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Bellagio Gardens

PROJECT FILE NUMBER: PDC 01-12-103

PROJECT DESCRIPTION: Planned Development Rezoning from R-2 Residential District to A(PD) Planned Development District and subsequent permits to allow up to 26 multi-family attached residences on a 0.67 gross acre site (Rincon South Specific Plan).

PROJECT LOCATION & ASSESSORS PARCEL NO.: Northwest corner of North First Street and Gish Road; 230-30-111, -112, -113, -114 & -115

COUNCIL DISTRICT: 3

NAME OF APPLICANT: John Moniz/HMH Inc.

MAILING ADDRESS AND PHONE NO. OF APPLICANT CONTACT PERSON:

HMH, Inc.
P.O. Box 61150
San Jose, CA 95161
(408) 487-2200

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

1. Use dust-proof chutes for loading construction debris onto trucks.
2. Water to control dust generation during demolition of structures and break-up of pavement.
3. Cover all trucks hauling demolition debris from the site.
4. Ware or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
5. Cover all trucks hauling soil, sand, or loose materials, or required trucks to maintain at least two feet of freeboard.
6. Sweep daily all paved access road, parking areas, and staging areas at construction sites.
7. Sweep streets daily if visible soil material is carried onto adjacent public streets.
8. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc)
9. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
10. Replant vegetation in disturbed areas as quickly as possible.

All trees greater than 54 inches in circumference require the approval from the Director of Planning, Building and Code Enforcement of a Tree Removal Permit. Trees approved for removal shall be replaced as follows:

1. Each tree(s) less than 12 inches in diameter removed shall be replaced with one 15-gallon tree.
2. Each tree(s) between 12 inches and 18 inches in diameter removed shall be replaced with two 24-inch box trees.
3. Each tree(s) greater than 18 inches in diameter shall be replaced by four 24-inch box trees.

There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric resources.

4. If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
5. If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the Planning Department Project Manager to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the developer shall complete in order to mitigate

archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).

6. In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 25-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - a. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reenter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - b. A final report shall be submitted to the Planning Department Project Manager to the satisfaction of the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.
7. The project shall incorporate mitigation measures to minimize urban run-off. The mitigation measures include a storm water run-off management plan for construction activities to the satisfaction of the Department of Public Works, and compliance with all applicable City, Local, Regional, State and Federal laws. The project shall conform to the City of San Jose National Pollution Discharge Elimination System (NPDES) Storm Water Permit and shall include Best Management Practices (BMPs) as specified in the *Blueprint for a Clean Bay* to control the discharge of storm water pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City project Engineer. The Erosion Control Plan may include BMPs as specified by the Association of Bay Area Government's Manual of Standard Erosion & Sediment Control Measures for reducing impacts on the City's storm drainage system from construction activities. The project will be required to mitigate for flooding through proper construction. A Flood Elevation Certificate for each proposed structure, based on construction drawings, is required prior to the issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction, is required prior to issuance of an occupancy permit. These certificates will confirm that all proper measures were taken to mitigate flood hazards to less than significant.

City of San Jose noise criteria and California Noise Insulation standards require that noise levels within new residential units must provide an interior noise level of 45 decibels or less. To meet the interior noise City of San Jose General Plan standards, the following mitigation shall be implemented:

8. Solid noise barriers at the periphery of the patios on North First Street and Gish Road which block the line of sight from a person on the patio to traffic on the surrounding roadways will be included in the project to reduce noise levels on the patios to acceptable levels.
9. Interior noise mitigation for this project will consist of mechanical ventilation of all units with windows opening on the northeast, southeast, and northwest facades and sound-rating windows in units with windows opening to North First Street.
10. Construction hours shall be confined to 7:30 AM to 5:30 PM, and restrict construction to weekdays only.
11. To reduce the temporary noise increase due to construction activities, the project will be conditioned to include proper equipment mufflers, maintenance of equipment and limitation of construction hours. With these mitigation measures, the temporary impacts to the project noise will be reduced to a less than significant level.

In addition to the above listed mitigation measures, the following must be incorporated into the project in order to reduce potential effects which would cause substantial adverse effects on human beings, either directly or indirectly:

12. Prior to issuance of a Public Works Clearance and issuance of a Demolition Permit the applicant must have the property inspected by a licensed pest control operator to determine if populations of the Norway and/or House rats are located on the subject property.
13. If Norway/House rats are sited on the property or within the existing structures the applicant must have the site treated by a licensed pest control operator to ratify the subject rat population from the site. In addition the site must be re-inspected prior to demolition of the structures in order to ensure the population has been eliminated from the site. Should rat populations (Norway/House) remain on the site prior to demolition, the site must be re-treated in order to complete the ratification of the rat population from the site.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **June 30, 2003**, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or

- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$50 filing fee. The written protest should make a “fair argument” based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

Circulated on: June 9, 2003

Deputy

Adopted on: _____

Deputy

PUBLIC HEARING NOTICE

The City Council of the City of San José will consider a change in **Zoning** at a public hearing in accordance with Title 20 of the San José Municipal Code on:

Wednesday, July 09, 2003

6:00 p.m.

City Council Chambers, Room 205

City Hall

801 North First Street

San Jose, CA 95110

Tuesday, August 05, 2003

7:00 p.m.

City Council Chambers, Room 205

City Hall

801 North First Street

San Jose, CA 95110

The project being considered is:

PDC01-103. Planned Development Rezoning from R-2 Residential District to A(PD) Planned Development District to allow up to 26 multi-family attached residences on a 0.67 gross acre site, located at/on the northwest corner of North 1st Street and Gish Road (1433 N 1ST ST) (Bellagio Garden, Llc Jerry C Chen, Owner). Council District 03. SNI: None. CEQA: Mitigated Negative Declaration.

Reports, drawings, and documents for this project are on file and available for review, and a permit with recommendations will be available for your review during the week of the public hearing from **9:00 a.m. to 5:00 p.m.**, Monday, Wednesday, Fridays, and from **10:00 a.m. to 5:00 p.m.** Tuesday and Thursdays at:

Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, CA 95110
(408) 277-4576

www.ci.san-jose.ca.us/planning/sjplan/

You are welcome to attend and to speak on this issue. To arrange an accommodation under the Americans with Disabilities Act to participate in this meeting, please call (408) 277-4576 (Voice) at least 48 hours before the meeting.

** If you choose to challenge this land use decision in court, you may be limited to only those issues you, or someone else, raised and discussed at the public hearing or in written correspondence delivered to the City at or prior to the public hearing.*

Comments and questions are welcome and should be referred to the **Project Manager, Michael Mena**, at the e-mail address: michael.mena@ci.sj.ca.us in the Department of Planning, Building and Code Enforcement. Please refer to the above file number for further information on this project.



Joseph Horwedel,
Deputy Director, Plan Implementation Division

Dated: **June 03, 2003**

Patricia L. O'Hearn,
City Clerk

Noticing Radius: **1000'**

SECTION 20.120.400 OF THE SAN JOSE MUNICIPAL CODE
ESTABLISHES A FORMAT PROTEST PROCEDURE FOR REZONINGS
AND PREZONINGS BEFORE THE CITY COUNCIL

If you are the owner of property to be rezoned, or if you own property adjacent to or across the street from a proposed rezoning or prezonning, you may file an Official Protest. Such protest must be made on a form provided by the Director of Planning and must be filed in the Department of Planning, Building and Code Enforcement **by 5:00 p.m.** on the fifth day before the City Council opens its public hearing on the proposal (that is, the Thursday before a Tuesday hearing). A separate protest petition shall be filed for each separate protesting site. Contact the Department of Planning, Building and Code Enforcement if you have any questions.